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9 Attorneys for Plaintiffs
10 RICHARD ROE, RICHARD ROE II,
11 and DON NELSON

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RICHARD ROE, RICHARD ROE II, DON A.) Case No.: 3:09-CV-682 PJH
NELSON, Individuals, SANTUCCIO,)
Plaintiffs,) **DECLARATION OF JOHN D.**
vs.) **O'CONNOR IN SUPPORT OF**
JOHN DOE, MARK CUBAN, an individual;) **MEMORANDUM OF POINTS AND**
and DALLAS BASKETBALL, LTD., a) **AUTHORITIES IN OPPOSITION TO**
partnership, and DOES 1 through 10,) **DEFENDANTS' SPECIAL MOTION TO**
Defendants.) **STRIKE**

Date: April 22, 2009
Time: 9:00 a.m.
Courtroom: 5, 17th Floor

I, John D. O'Connor, declare that:

1. I am an attorney duly licensed to practice law in all courts of the State of
California and am a principal in the law firm of John D. O'Connor & Associates, attorneys of
record for plaintiffs herein. I submit this declaration in support of plaintiffs' opposition to
defendants' motion to strike. If called to testify as a witness, I could and would competently
testify to the matters set forth in this declaration.

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2. A dispute between Nelson and the Dallas Mavericks was previously the subject of
3 an Arbitration with JAMS (JAMS Reference No. 1310016794) in Dallas, Texas. Discovery,
4 including depositions and document productions, was conducted by and between the parties in
5 that Arbitration.

6
7. Attached hereto as Exhibit 1 is a true and correct copy of the relevant pages of the
8 deposition transcript of Mark Cuban in the JAMS Arbitration, which transcript is a true and
9 correct rendition of the questions asked and answers given.

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11. Attached hereto as Exhibit 2 is a true and correct copy of the relevant pages of the
12 deposition transcript of Floyd Jahner in the JAMS Arbitration, which transcript is a true and
13 correct rendition of the questions asked and answers given.

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15. Attached hereto as Exhibit 3 is a true and correct copy of the relevant pages of the
16 deposition transcript of Don Nelson in the JAMS Arbitration, which transcript is a true and
correct rendition of the questions asked and answers given.

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18. Attached hereto as Exhibit 4 is a true and correct copy of the relevant pages of the
19 deposition transcript of John O'Connor in the JAMS Arbitration, which transcript is a true and
correct rendition of the questions asked and answers given.

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21. Attached hereto as Exhibit 5 is a true and correct copy of the initial contract
22 between Don Nelson and the Mavericks dated February 7, 1997, which contract was produced in
23 discovery in the JAMS Arbitration, was used in the depositions taken in the JAMS Arbitration,
24 and was accepted into evidence at the Arbitration hearing.

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26. Attached hereto as Exhibit 6 is a true and correct copy of the Fifth Amendment to
27 the initial contract between Don Nelson and the Mavericks dated July 7, 2003, which Fifth
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1 Amendment was produced in discovery in the JAMS Arbitration, was used in the depositions
2 taken in the JAMS Arbitration, and was accepted into evidence at the Arbitration hearing.

3 9. Attached hereto as Exhibit 7 is a true and correct copy of a series of emails dated
4 June 26-27, 2006 exchanged between Mark Cuban and Floyd Jahner, which emails were
5 produced in discovery in the JAMS Arbitration, were used in the depositions taken in the JAMS
6 Arbitration, and were accepted into evidence at the Arbitration hearing.

8 10. Attached hereto as Exhibit 8 is a true and correct copy of a series of emails dated
9 July 26, 2006 (including an attached email dated March 19, 2005) exchanged between Mark
10 Cuban and Floyd Jahner, which emails were produced in discovery in the JAMS Arbitration,
11 were used in the depositions taken in the JAMS Arbitration, and were accepted into evidence at
12 the Arbitration hearing.

13 11. Attached hereto as Exhibit 9 is a true and correct copy of a series of emails dated
14 June 26-27, 2006 exchanged between Mark Cuban, Floyd Jahner and Lisa Tyner, which emails
15 were produced in discovery in the JAMS Arbitration, were used in the depositions taken in the
16 JAMS Arbitration, and were accepted into evidence at the Arbitration hearing.

18 12. Attached hereto as Exhibit 10 is a true and correct copy of a series of emails dated
19 July 27, 2006 exchanged between Mark Cuban and Floyd Jahner, which emails were produced in
20 discovery in the JAMS Arbitration, were used in the depositions taken in the JAMS Arbitration,
21 and were accepted into evidence at the Arbitration hearing.

23 13. Attached hereto as Exhibit 11 is a true and correct copy of an email dated
24 July 28, 2006 from Floyd Jahner to Don Nelson (mavs19@aol.com), which email was produced
25 in discovery in the JAMS Arbitration, was used in the depositions taken in the JAMS Arbitration,
26 and was accepted into evidence at the Arbitration hearing.

1 14. Attached hereto as Exhibit 12 is a true and correct copy of a series of emails dated
2 July 29-31, 2006 exchanged between Don Nelson (mavs19@aol.com) and Floyd Jahner, which
3 emails were produced in discovery in the JAMS Arbitration, were used in the depositions taken in
4 the JAMS Arbitration, and were accepted into evidence at the Arbitration hearing.
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6 15. Attached hereto as Exhibit 13 is a true and correct copy of a proposed Sixth
7 Amendment to Employment Agreement between Don Nelson and the Mavericks which was
8 prepared by the Mavericks and forwarded to Nelson, and which was produced in discovery in the
9 JAMS Arbitration, was used in the depositions taken in the JAMS Arbitration, and was accepted
10 into evidence at the Arbitration hearing.

11 16. Attached hereto as Exhibit 14 is a true and correct copy of an email dated
12 August 3, 2006 from Robert Rowell to John O'Connor, which email was produced in discovery in
13 the JAMS Arbitration, was used in the depositions taken in the JAMS Arbitration, and was
14 accepted into evidence at the Arbitration hearing.
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16 17. Attached hereto as Exhibit 15 is a true and correct copy of a letter dated
17 August 4, 2006 that I prepared and sent to Mark Cuban and Robert Hart.
18

19 18. Attached hereto as Exhibit 16 is a true and correct copy of an email (with attached
20 Employment Agreement) dated August 29, 2006 from Robert Rowell to John O'Connor, which
21 email and attachment were produced in discovery in the JAMS Arbitration, were used in the
22 depositions taken in the JAMS Arbitration, and were accepted into evidence at the Arbitration
23 hearing.
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25 19. Attached hereto as Exhibit 17 is a true and correct copy of the Arbitrator's July
26 31, 2008 Interim Award in the Arbitration between Nelson and the Mavericks.
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28 20. The Arbitrator issued his Final Decision on September 10, 2008, which was
consistent with the Interim Award.

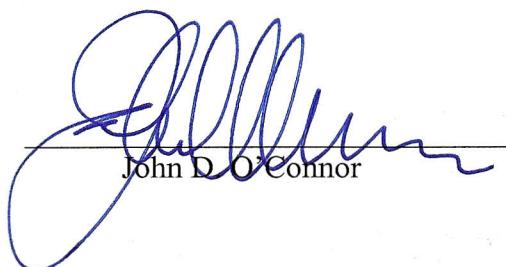
1 21. On November 19, 2008, the Texas State District Court in Dallas confirmed the
2 Final Award of the Arbitrator and entered Final Judgment in favor of Nelson and against the
3 Mavericks in the amount of \$6,306,185.85 in damages, plus \$816,352.42 in attorneys' fees, plus
4 postjudgment interest from September 10, 2008 until the judgment is satisfied. Attached hereto
5 as Exhibit 18 is a true and correct copy of the Final Judgment. The matter is now on appeal by
6 Dallas Basketball to a Texas State Appellate Court.
7

8 22. Attached hereto as Exhibit 19 is a true and correct copy a series of emails dated
9 September 9, 2008 exchanged between the attorneys for Nelson (Don Colleluori) and the
10 attorneys for Dallas Mavericks (Geoffrey Harper), and another series of emails between the
11 attorneys for the parties on November 7-8, 2008.

12 23. Attached hereto as Exhibit 20 is a true and correct copy of the relevant pages of
13 the transcript of the JAMS Arbitration that took place over two days beginning June 23, 2008. I
14 attended the Arbitration and the transcript is a true and correct rendition of the questions asked
15 and answers given.

16 I declare under penalty of perjury under the laws of the state of California that the
17 foregoing is true and correct.

18 Date: April 1, 2009



John D. O'Connor